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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Antwan Kevin Baker,

Plaintiff

v.

Shoemaker, et al.,

Defendants

Case No.: 2:17-cv-01566-JAD-CWH

**Order Denying Default
Remedies and Directing Plaintiff to
Take Further Action to
Avoid Dismissal**

[ECF Nos. 17, 20]

Pro se plaintiff Antwan Kevin Baker brings this civil-rights action for events that allegedly occurred during his incarceration at the Clark County Detention Center. The court screened his complaint, allowed Baker to proceed with a single failure-to-protect claim against Correctional Officer Shoemaker only, and directed the Clerk of Court to issue summons for Shoemaker.¹ The court also directed Baker to give the U.S. Marshal the required and completed USM-285 form by July 5, 2018, so that it could serve Shoemaker with the summons and complaint.² The U.S. Marshal returned the summons on July 18, 2018, indicating that it did not serve Shoemaker with process because “No USM 285 Received for Service.”³

Despite the fact that Shoemaker has not been served,⁴ Baker moves for a default and default judgment. The clerk of court may enter a default against a defendant only after he has

¹ ECF No. 5.

² *Id.* at 5.

³ ECF No. 9 at 2.

⁴ Baker has filed a series of nonsensical documents that he has titled “notice” or “proof of service.” *See* ECF Nos. 8, 10–13, 14–16. None demonstrates that Shoemaker was served with process.

1 been served with process but “failed to plead or otherwise defend” against the lawsuit.⁵ And
2 default judgment can’t be entered until the clerk has entered default *and* the plaintiff has
3 demonstrated that a default judgment is appropriate by analyzing the factors outlined by the
4 Ninth Circuit in *Eitel v. McCool*.⁶ Because Shoemaker has not yet been served with process,
5 neither a default nor a default judgment is available to Baker. So his requests for a default and
6 default judgment⁷ are denied.

7 I will give Baker one more opportunity to take the steps necessary to serve Shoemaker.
8 Accordingly, IT IS HEREBY ORDERED THAT:

9 Baker’s requests for a default and default judgment [ECF Nos. 17, 20] are **DENIED**;

10 IT IS FURTHER ORDERED that the **Clerk of Court** is directed to:

- 11 • **ISSUE** a new **summons** for Defendant Shoemaker and **deliver it to the U.S.**
12 **Marshal for service**;
- 13 • **SEND** to Baker one USM-285 form; and
- 14 • **SEND** to the U.S. Marshal a copy of the complaint and a copy of this order for
15 service on Defendant Shoemaker.

16 IT IS FURTHER ORDERED that **Baker has until January 25, 2019, to deliver to the**
17 **U.S. Marshal the required USM-285 form with relevant information for Defendant**
18 **Shoemaker. If Baker does not provide the U.S. Marshal with the properly completed USM**
19 **-285 form for Shoemaker by January 25, 2019, this action will be DISMISSED without**
20 **prejudice for failure to comply with court order.** After receiving a copy of the USM-285

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⁵ Fed. R. Civ. P. 55(a).

23 ⁶ *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986).

⁷ ECF Nos. 17, 20.

1 forms back from the U.S. Marshal showing whether service was accomplished, Baker **will have**
2 **20 days to file a notice with the Court identifying whether Shoemaker was served or not.** If
3 Baker chooses to have service reattempted on Shoemaker (if service was not accomplished the
4 first time), he must **file a motion** with the court specifying a more detailed name and address for
5 Shoemaker and whether some other manner of service should be attempted. **That motion must**
6 **be filed within 20 days of receiving the USM-285 forms back from the U.S. Marshal, or this**
7 **case will be dismissed without prejudice for failure to prosecute.**

8 Dated: January 2, 2019

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U.S. District Judge